

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
W.R. GRACE & CO., <i>et al.</i> ,	.	Case No. 01-01139 (JKF)
	.	Jointly Administered
Debtors.	.	
	.	Aug. 21, 2006 (1:55 p.m.)
	.	(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;
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1 myself. Let's get the factual record by one deposition of
2 what they actually had and their ability to do it. You may
3 disagree with my assertion that they should have given notice
4 to this group of building owners or sub-group. You may agree
5 that, well, maybe for these 25 buildings they should go out
6 with the right notice or should have. I don't know. We're
7 arguing in a vacuum.

8 THE COURT: What I'm suggesting is it's too late.
9 The time to do this was at the time that the debtor filed a
10 motion to approve the bar date program or at the time that
11 the certification with respect to the actual notice came in.
12 It is not time to reopen an issue that this Court adjudicated
13 and has been a final order for three years. That's my
14 concern. I just think it's too late.

15 MR. BERNICK: Your Honor, with respect to the
16 Anderson Memorial . . . (microphone not recording) think
17 there's been so much time extended on . . . about what
18 actually occurred there . . . representations that are still
19 being made today about what the certification was that are
20 made by officers before the Court. We have got for the sake
21 of a record here to come to terms with what those orders were
22 Now, maybe Mr. Speights submitted something. He keeps on
23 talking about a putative class. In 1994, the Judge in the
24 case struck the allegations for class determination for non-
25 residents for the claims that don't arise in South Carolina

1 or where the property is not situated in South Carolina. He
2 just struck it because of the door closing schedule. So,
3 there's no putative class. There's nothing. It's a South
4 Carolina case. Then we have a conditional certification. I
5 have that document. It was ex parte February 2001. I got
6 that one. That includes Grace but it's conditional. I have
7 a letter in May that reads as follows: It says, Please draw
8 an order for my review granting plaintiff's motion for class
9 certification as requested. The order should specifically
10 state that the order affects only the three remaining
11 defendants due to the stay as to W.R. Grace. Please tailor
12 the order in conformity with plaintiff's brief and reply
13 brief. I believe the pertinent issues are dealt with fully
14 and appropriately therein. So, we have the conditional
15 certification. We then have the final certification. The
16 final certification at least as the letter reads was to
17 exclude Grace and if you go to the opinion and order, you can
18 see that it basically does, although it's not as plain as the
19 letter is. Under any set of circumstances, I see nothing in
20 the record to indicate that there was a final order of
21 certification for Grace in any respect.

22 THE COURT: I cannot see a final order of
23 certification as to Grace. Had it been entered pursuant to
24 the letter that was sent from the Judge to Mr. Speights, it
25 would have been post-petition and void, and to the extent

1 that it was not made final, the interim certification goes
2 away when it's not made final. It doesn't exist anymore.

3 MR. BERNICK: Right.

4 THE COURT: Now, it may be reinstated at some point
5 if the bankruptcy's over. I mean, there's a possibility that
6 people could go back and reinstate it, but it doesn't exist
7 anymore. It's not a certification.

8 MR. BERNICK: Okay, and all I'm saying - and that's
9 how I look at these documents, but Mr. Speights got up and
10 made a representation yet again today that it was certified
11 pre-petition as to W.R. Grace and that there is some other -
12 we just ought to get past this so we don't keep on having
13 this debate.

14 THE COURT: I do not - Mr. Speights did send me
15 these documents. I apologize again, I don't recall when, but
16 I have seen these documents. I have looked at these orders.
17 There is no final certification as to Grace, and the
18 conditional one at this point in time is irrelevant because
19 it was not finally certified. So - And as to the putative
20 class, I agree that the Judge struck all of the non-South
21 Carolina entities from the class that the Judge did certify,
22 so even if there were conditional certification as to Grace,
23 it's only as to South Carolina defendants at this point in
24 time.

25 MR. BERNICK: Thank you.